

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 8 9 54 AM '92

MM Docket No. 92-203

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Indiantown and Okeechobee, Florida)

RM-8057

NOTICE OF PROPOSED RULE MAKING

Adopted: August 19, 1992; Released: September 4, 1992

Comment Date: October 26, 1992

Reply Comment Date: November 10, 1992

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed on behalf of Okeechobee Broadcasters, Inc. ("petitioner"), licensee of Station WOKC(FM), Channel 276C2, Okeechobee, Florida, proposing the reallocation of Channel 276C2 from Okeechobee, Florida, to Indiantown, Florida, as that community's first local service.¹ Petitioner also seeks the modification of its license accordingly.

2. Petitioner states that although Indiantown is an unincorporated community, it is a Census Designated Place in Martin County, Florida, with a 1990 U.S. Census population of 4,794 persons. Petitioner states that Indiantown residents receive local government services from Martin County. However, the community of Indiantown has two public schools, a private school, a branch of the Martin County Public Library, a volunteer fire department, an airport, nine churches, a bank, a U.S. Post Office, a walk-in medical treatment center, an independent telephone system and a weekly newspaper. Civic organizations are the Indiantown Chamber of Commerce, Kiwanis, Jaycees, VFW, 4-H, PTO and Boy Scouts.

3. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. In this regard, petitioner states that the requested change to Indiantown is mutually exclusive with the allotment of Channel 276C2 at Okeechobee, as it proposes no change in the present reference coordinates for Channel 276C2 at Okeechobee.² Petitioner argues that the reallocation of Channel 276C2 from Okeechobee to Indiantown will result in a preferential arrangement of allotments. Indiantown would receive its first local transmission service and Okeechobee (population 4,943) will continue to receive local aural transmis-

sion service from Station WOKC-AM and non-commercial Station WWFR(FM).³ Petitioner also states that neither Indiantown nor Okeechobee is located in an urbanized area.

4. An engineering analysis has determined that Channel 276C2 can be allotted to Indiantown in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.4 kilometers (13.9 miles) north of the community at the site for vacant Channel 276C2 at Okeechobee. We note that the proposed reallocation of Station WOKC(FM) to Indiantown, Florida will be short-spaced to pending applications for Channel 276C3, Winter Park, Florida (BPH-920527IE), and Channel 276C3 at Naples, Florida (BPH-920527IG).

5. We believe the public interest may be served by proposing to reallocate Channel 276C2 from Indiantown to Okeechobee, Florida, since Indiantown could receive its first local transmission service. As requested, we will propose to modify petitioner's license for Station WOKC(FM) to specify Indiantown as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 276C2 at Indiantown or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Indiantown, Florida	--	276C2
Okeechobee, Florida	276C2	--

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before October 26, 1992, and reply comments on or before November 10, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John M. Spencer
Leibowitz & Spencer
One S.E. Third Avenue, Suite 1450
Miami, Florida 33131
(Counsel for Okeechobee Broadcasters, Inc.)

¹ Petitioner is presently licensed on Channel 276A at Okeechobee, Florida. However, it was modified to specify operation on Channel 276C2 by Report and Order (MM Docket 89-434), 7 FCC Rcd 1970 (1992). An application (BPH-920527IH) to effect-

uate this upgrade is pending.

² The coordinates for Channel 276C2 at Indiantown are North Latitude 27-12-55 and West Longitude 80-31-50.

³ Population figures are taken from the 1990 U.S. Census.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* to the applicants for Channel 276C3, Naples, Florida and Channel 276C3, Winter Park, Florida, as follows.

Sterling Communications
368 Goodlette Rd S. 522
Naples, Florida 33941
(BPH-920527IG)

Gross Communications Corp.
170 West Faribanks Ave.
Winter Park, Florida 32789
(BPH-920527IE)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.